



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on November 21, 2016. The Landlord filed seeking: an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; to keep all or part of the security and/or pet deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. No one was in attendance on behalf of the Tenant.

The Landlord submitted evidence that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on November 22, 2016, by registered mail.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the foregoing, I find the Tenant was deemed served notice of this application and hearing on November 27, 2016, five days after they were mailed, pursuant to section 90(a) of the *Act*. As such, I continued to hear the undisputed evidence of the Landlord?

Issue(s) to be Decided

- 1) Has the Landlord regained possession of the rental unit?
- 2) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on March 1, 2015 and switched to a month to month tenancy after February 29, 2016. As per the tenancy agreement and tenancy addendum the Tenant was required to pay rent of \$780.00 plus \$40.00 for parking on the first of each month. The rent was subsequently increased to \$802.62 per month effective March 1, 2016. On February 17, 2015 the Tenant paid \$390.00 as the security deposit. The Landlord testified that on October 27, 2016 they received the Tenant's written notice to end his tenancy. That notice indicated the tenancy would be ended effective November 30, 2016. The Landlord submitted that when the Tenant's November 1, 2016 rent was returned NSF a 10 Day Notice was posted

to his door on November 4, 2016. That 10 Day Notice indicated the November 1, 2016 rent of \$802.62 was unpaid and listed an effective date of November 17, 2016.

The Landlord testified the Tenant remained in possession of the rental unit until November 30, 2016 and that they subsequently re-rented the unit effective December 1, 2016. As such the Landlord withdrew her request for an Order of Possession.

The Landlord now seeks to recover the \$802.62 unpaid November 2016 rent; \$40.00 November 2016 parking; the \$25.00 November NSF fee; and the \$25.00 late fees for November 2016. She noted that the late fee and NSF fee are provided for in section 10 of the tenancy agreement under the heading of Arrears.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord regained possession of the rental unit November 30, 2016 and withdrew her request for an Order of Possession. The Landlord re-rented the unit effective December 1, 2016; therefore, I conclude the Landlord did what was reasonable to minimize their loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Landlord claimed unpaid rent and parking fees of \$842.62 (\$802.62 + \$40.00) that were due November 1, 2016 in accordance with section 26 of the *Act*. Section 26 of the *Act* stipulates a tenant must pay rent and fees in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent and parking for November 2016 in the amount of **\$842.62** pursuant to section 67 of the *Act*.

Regarding the Landlord's claim for NSF fees and a late payment fee, section 7 of the Regulations stipulates that a landlord may charge a tenant a non-refundable fee for late payments or returned cheques or payments providing that the tenancy agreement provides for that fee.

As noted above, the tenancy agreement provides for late payment and returned cheque fees at section 10 under "Arrears". The undisputed evidence was the Tenant's November 2016

payment was returned NSF and was late as it was never paid. Accordingly, I conclude the Landlord has proven the claim and I award them late fees and a NSF fee in the amount of **\$50.00** (2 x \$25.00), pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee, pursuant to sections 67 and 72 of the *Act*.

This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$390.00 deposit since February 17, 2015.

Unpaid November 2016 Rent & parking	\$ 842.62
NSF fee for Nov. 2016 returned payment	25.00
Late payment fee for November 2016	25.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$ 992.62
LESS: Security Deposit \$390.00 + Interest 0.00	<u>-390.00</u>
Offset amount due to the Landlord	<u>\$602.62</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$602.62 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$602.62** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was successful with their application and was issued a monetary award of \$992.62 which was offset against the Tenant's security deposit leaving a balance owed to the Landlord of \$602.62.

This decision is final, legally binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 06, 2017

Residential Tenancy Branch